

# **EXHIBIT 33**

Letter dated February 27, 1929 to Commissioner of Indian  
Affairs from Superintendent of Irrigation

Los Angeles, Calif.  
February 27, 1929

Irrigation  
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Walker River Suit: Nevada

The Commissioner of Indian Affairs,  
Washington, D. C.

Sir:

I have before me the Office letter of January 21, this year, about the Walker River suit in Nevada. Upon my return from Arizona I took up this matter and have been having telegraphic and letter correspondence with Judge Harwood at Reno and Mr. Ward at Denver, concerning it.

Judge Harwood and Mr. Ward want to set the case down for further hearings but before doing so wish to agree upon a stipulation that the Government would offer to enter into. Their idea is that this stipulation should be approved by the Indian Service, and that if it is not accepted by the defendants the Government should go on with its case, and should be prepared to do that at once.

So Mr. Ward and Judge Harwood want the Indian Service to do two things: first, approve the proposed stipulation, and second, be prepared to prove certain facts which form the basis of the stipulation, in the event that the other side refuses to stipulate.

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The stipulation has mainly to do with using measurements of the stream at certain points and assuming a fixed relation of the flow of one fork with another. All this is to be used as a basis for administering the decree, but the stipulation also decides as to what flows would be too small to reach the Indian Reservation and fixes the rights of storage between the plaintiff and the defendants.

If I understand the stipulation, and I think I do in the main at least, I consider that its principle is sound and that, if adopted, it would save a lot of work and time and uncertainty.

I suggest that the final draft provide for the Indian Reservation being given a direct flow priority for a certain number of acres, with the water to be taken from the stream at the present reservation points of division. This, it seems to me, is and must be the fundamental right of the Government, and that it should be given and should be maintained no matter what may happen to the stream above caused by others.

Then I think it proper to have the stipulation provide, as the draft of it does provide, for measurements at certain points and for such measurements controlling unless and until otherwise ordered by the court on a proper showing.

Judge Harwood is doubtless right in saying that the Government may have a prior right of storage. The question there is partly at least, as to how far it is fair and wise to press the doctrine of reserve rights. I assume that we have enough in the

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case, in pleadings and proof, to support a decree giving the Government storage rights.

A right to store 30,000 acre-feet at or near our proposed reservoir would be valuable and should be obtained if possible.

It occurs to me that as a practical matter the defendants might be as willing to concede this storage for such a small amount and so far down on the stream, as a first right, as they would to concede it as a secondary one. By doing this they might stand more chance of inducing the Government to build the reservoir. That solution, as far as the decree goes, would be more logical from the standpoint of our legal theory, and if satisfactory to the defendants would be better all around.

To avoid delays I am sending copies of this letter to Judge Harwood and Mr. Ward, as well as to Mr. Engle and Mr. Kronquist.

Judge Harwood and Mr. Ward suggest that they will want the testimony of Mr. Clotts or Mr. Reed, or both. Of course that would involve expense but may be necessary. I am asking Judge Harwood just what he considers that he needs in that regard.

Unless the Office directs me otherwise I shall proceed along the line above indicated. I trust that my presence will not be necessary at Reno but am holding myself in readiness to go there if it is required.

Respectfully,

cc-Cole L. Harwood ✓

Mr. Ward ✓

Supt. of Irrigation.

Mr. Aronquist ✓

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